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In The

# Supreme Court of the United States

MARGARET SPELLINGS,
SECRETARY OF EDUCATION,

*Petitioner,*

v.

DEE ELLA LEE,

*Respondent.*

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit**

## BRIEF FOR THE RESPONDENT IN OPPOSITION

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## QUESTION PRESENTED

Do the Social Security Act and the Debt Collection Improvement Act bar the United States from withholding Social Security benefits to collect student loan debt that has been outstanding for more than ten years, or does the Higher Education Act eliminate any such bar?

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## BRIEF FOR THE RESPONDENT IN OPPOSITION

Respondent Dee Ella Lee respectfully submits that the petition for certiorari should be denied.

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## STATEMENT

### 1. Statutory Framework

This case presents the question of whether the government may seize Social Security benefits to collect student loan debt that has been outstanding for more than ten years. Resolution requires the analysis of four statutory provisions enacted over several decades. The chronology of these provisions contained within the Social Security Act, the Higher Education Act, and the Debt Collection Act (as amended by the Debt Collection Improvement Act) is important to understanding how the Eighth Circuit reached the decision below.

#### a. The Social Security Act of 1935

The Social Security Act of 1935, as amended, establishes a social insurance program for wage earners and their dependents, 42 U.S.C. § 401 *et seq.*, and a public assistance program for people who are blind, aged, or disabled and have low income. 42 U.S.C. § 1381 *et seq.*

The benefits paid under the Social Security Act are protected by a strict anti-alienation provision. This provision states that "none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law." 42 U.S.C. § 407(a). As this Court has

recognized, "[t]he language is all-inclusive." *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 415 (1973). "[I]t imposes a broad bar against the use of any legal process to reach all social security benefits." *Id.* at 417.

In 1983 Congress provided additional strength to the already comprehensive protection afforded by the anti-alienation provision, in response to bankruptcy court decisions, allowing the attachment of Social Security benefits by bankruptcy trustees based on the supposed repeal by implication of section 407 by the Bankruptcy Reform Act. See Pub. L. No. 98-21, § 335(a) (1983), reprinted in 1983 U.S.C.C.A.N. 443. Congress added a unique requirement to the anti-alienation provision: "No other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section." 42 U.S.C. § 407(b).

**b. The Debt Collection Act of 1982**

Federal agencies, including the Secretary of Education, have several methods to collect debts owed to the United States. In addition to filing suit to obtain or collect a judgment, the Secretary of Education may collect student loan debts through extra-judicial means. For example, even without a judgment, agencies may collect a debt by directing the Department of the Treasury to intercept tax refunds, 31 U.S.C. § 3720A, or, where a debt is owed by a federal employee, by deducting part of the employee's salary, 5 U.S.C. § 5514. The Department of Education also has the extra-judicial authority to garnish the wages of

private employees by issuing administrative garnishment orders. 20 U.S.C. § 1095a.

This case involves another debt collection tool, "administrative offset," authorized by the Debt Collection Act of 1982 (DCA), 31 U.S.C. § 3716(a). Administrative offset is the withholding of money payable by the United States to a person to satisfy a debt the person owes to the government. 31 U.S.C. § 3701(a)(1). The Treasury Department operates the Treasury Offset Program, which is used by federal agencies and states to collect debt by offsetting federal payments, including tax refunds and federal salaries. Federal agencies, such as the Department of Education, which have been unable to collect claims against a debtor, can certify nontax debts which are over 180 days delinquent to be collected by administrative offset. The officials disbursing payments on behalf of federal agencies then withhold funds to pay the claim.

The Debt Collection Act specifically exempts two categories of claims from administrative offset. Administrative offset authority does not apply "to a claim under this subchapter that has been outstanding for more than 10 years" or "when a statute explicitly prohibits using administrative offset or setoff to collect the claim or type of claim involved." 31 U.S.C. § 3716(e) (originally codified at 31 U.S.C. § 3716(c)).

The government's administrative offset authority did not initially extend to Social Security benefits due to the anti-assignment provision of the Social Security Act.

### c. 1991 Amendment to the Higher Education Act of 1965

In 1991 Congress sought to ensure that student loan debts would be enforceable without regard to state or federal limitations periods. The Higher Education Act of 1965 (HEA) was amended to provide: "Notwithstanding any other provision of statute, regulation, or administrative limitation, no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action initiated or taken by" the Secretary of Education or another government agency "for the repayment of [a student loan] . . . that has been assigned to the Secretary." Higher Education Technical Amendments of 1991, Pub. L. No. 102-26, § 3, 105 Stat. 123, 124 (1991) (codified at 20 U.S.C. § 1091a(a)(2)).

The legislative history indicates that Congress was concerned with the government's collection of student loan debt through the offset of tax refunds, as authorized by 31 U.S.C. § 3720A. The amendment was a response to *Grider v. Cavazos*, 911 F.2d 1158, 1164-65 (5th Cir. 1990) (holding that "an assigned student loan debt which is time barred for collection by lawsuit cannot be collected by tax refund offset" for debts over ten years old). See 137 Cong. Rec. H1808, H1810 (1991) (statement of Rep. Ford) (noting that the amendment "overcomes a recent circuit court decision that puts in jeopardy the ability of the Department of Education to collect defaulted student loans through offsets of income tax refunds and other means").

The 1991 HEA amendment did not make express reference to the Social Security Act's anti-alienation provision. At the time the amendment was enacted, the

government did not have the authority to offset Social Security benefits under any circumstances.

### d. The Debt Collection Improvement Act of 1996

Congress enacted the Debt Collection Improvement Act (DCIA) in 1996, which amended the Debt Collection Act by expanding administrative offsets. Pub. L. No. 104-134, Title III, § 31001(a)(2), 110 Stat. 1321-358 (1996) (codified at 31 U.S.C. § 3716). The DCIA, for the first time, authorized the limited withholding of Social Security payments through administrative offset by making the required "express reference" to the Social Security anti-alienation provision. 31 U.S.C. § 3716(c).

Section 3716 imposes several important safeguards and limitations on offsets. For example, the first $9,000 of Social Security or other payments are exempt from offset. *Id.* § 3716(c)(3)(A)(ii). Administrative offsets may only be imposed after the debtor has been given notice of the agency's claim and the opportunity to contest the debt. *Id.* § 3716(a).

Most important, the DCIA retained the DCA's ten-year statute of limitations, which had previously been codified at 31 U.S.C. § 3716(c). The DCIA prohibits administrative offset of any claim "that has been outstanding for more than 10 years." 31 U.S.C. § 3716(e)(1).

The DCIA's legislative history shows that Congress was concerned about the impact that administrative offset would have on elderly and disabled Social Security beneficiaries and intended the government to strictly observe safeguards and limitations on its offset authority. "Such

safeguards are critical," the Conference Report emphasized, "when benefits such as Social Security are the sole or major source of income for the debtor." H.R. Conf. Rep. No. 104-537, 104th Cong., 2d Sess., 142 Cong. Rec. H3842, H4042-43 (Apr. 25, 1996).

**2. Factual Background**

In October 2001 the Department of Education initiated offset of Dee Ella Lee's Social Security benefits. C.A. App. 16. (The Eighth Circuit Court of Appeals Appendix shall be referred to as "C.A. App.") Ms. Lee's Social Security payment, her sole source of income, was reduced from $814 to $750 per month. Pet. App. 7a. Her Social Security benefits are her only means to pay all of her basic living expenses: rent, food, utilities, personal necessities and medical supplies. C.A. App. 38.

Ms. Lee began receiving Social Security disability payments in 1973 after many years of working. C.A. App. 37. Despite her disability, she wished to return to work by becoming an English teacher. She enrolled at Penn Valley Community College and then the University of Missouri – Kansas City to finish her college education. C.A. App. 37-38. She obtained two National Direct Student Loans (now called "Perkins" loans) of $1400 and $1500 from the two schools to complete her studies. C.A. App. 38. (The district court below stated that the second loan amount was $2,000 based upon the assertions of the government; however, Ms. Lee disputes this amount. Pet. App. 6a.) Although she ultimately received her college degree, she was unable to return to work because of continuing health problems. C.A. App. 38.

She has been unable to repay the loans since her Social Security income is barely sufficient to meet her necessary living expenses. C.A. App. 38. Ms. Lee requested that the Department of Education forgive the loans because of her disability, but her request was denied because she had a pre-existing disability when she obtained the student loans. C.A. App. 39.

Ms. Lee obtained her two student loans in 1978. Pet. App. 6a. When Ms. Lee was unable to return to work and make payment on the loans, they were declared in default in 1984. *Ibid.* The Department of Education took assignment of the loans on December 29, 1987, and September 27, 1989. C.A. App. 26. The Department of Education initiated seizure of Ms. Lee's Social Security payments under the "Treasury Offset Program." C.A. App. 26.

## REASONS FOR DENYING THE PETITION

1. This case does not present a question of substantial or recurring importance, and pending legislation could overturn the decision entered below. The issue is whether or not the Department of Education may initiate offset of Social Security benefits to satisfy an unpaid student loan which has been outstanding for more than ten years. By pure coincidence two courts of appeal rendered decisions on this issue within a few days of each other. In this case the Eighth Circuit held that the Department of Education was prohibited by the Debt Collection Act's ten-year statute of limitations from offsetting Ms. Lee's Social Security benefits. In the Ninth Circuit case of *Lockhart v. United States*, 376 F.3d 1027 (9th Cir. 2004), the court held that the ten-year statute of

limitations in the Debt Collection Act could not be applied to delinquent student loans. As explained below, the Eighth Circuit reached the correct result.

While the Ninth Circuit and Eighth Circuit reached a different result, there is no matter of importance which compels this Court's review.

Although two courts of appeal addressed the issue within days of each other, this is not a frequently litigated question. Since the offset law was implemented in 2001, virtually no litigation has occurred concerning the questions presented by this case and *Lockhart*. Only one other case, *Guillermety v. Secretary of Education*, 241 F. Supp.2d 727 (E.D. Mich. 2002), has addressed this issue. Ms. Lee has been unable to find any unreported decisions which considered the question presented in this case. Far from being a recurring issue, these three cases seem to be the *only* cases deciding the question presented. Neither this case nor *Lockhart* raised class action claims, and the decisions adjudicated the rights of a single individual.

The Department of Education argues that the decision below could put the agency in the position of enforcing different rules in different geographic areas. While that is true in the abstract, no substantial burden on the agency is apparent. As mentioned above, virtually no individuals have attempted to challenge the offset provisions. If an individual chooses not to raise the statute of limitation as a defense, the agency may continue collection efforts. Certainly no burden is placed upon the agency by those who acquiesce in the offsets. Given the dearth of litigation on this subject, it appears that the Department of Education's burden would be minimal, at most.

Even if the Department of Education needs immediate action in the interest of nationwide uniformity, there is no explanation why a legislative solution could not resolve this question. In fact, several reasons suggest that a legislative solution is likely and perhaps preferable.

First, the decisions in this case and *Lockhart* are just a few months old. Even before the decisions were final, legislation was proposed to allow the extension of the offset provisions as urged by the Department of Education. Legislation submitted September 15, 2004, would have permitted the government to engage in the very practice the court below held was prohibited by current federal law: the offset of Social Security benefits to collect debt outstanding for more than ten years. The provision was included in a significant appropriations bill before the expiration of the last congressional session. See Transportation, Treasury and General Government Appropriations Act, S. 2806, 108th Cong., 2d Sess., § 642 (2004). An accompanying Senate Report states that this provision would have amended 31 U.S.C. § 3716(e) to eliminate "the 10-year statute of limitations period applicable to the offset of Federal non-tax payments." S. Rep. 108-342, 108th Cong., 2d Sess. (2004) at 205. This legislation was not acted upon in the brief period before expiration of the legislative term.

On March 17, 2005, a bill was introduced in Congress with the specific purpose of amending the Debt Collection Act "to eliminate the 10-year limitation on the collection of nontax debt." H.R. 1427, 109th Cong., 1st Sess. (2005). The bill would eliminate the current language in § 3716(e)(1) limiting offset to debts outstanding for no more than 10 years and replace it with language that the offset procedure "applies to a claim under this subchapter regardless of the period it has been outstanding."

Although this legislation has not yet been acted upon, it establishes that Congress has been fully informed of the court decisions rejecting the government's position and presumably will overturn those decisions if it disagrees with them.

Second, when confronted with a court decision limiting the tax offset program to a ten year period, Congress did act. In *Grider v. Cavazos*, 911 F.2d 1158, 1164-65 (5th Cir. 1990), the court held that "an assigned student loan debt which is time barred for collection by lawsuit cannot be collected by tax refund offset" if the debt is over ten years old. Congress acted promptly by amending the Higher Education Act in 1991 to remove the limitation period, noting the amendment "overcomes a recent circuit court decision that puts in jeopardy the ability of the Department of Education to collect defaulted student loans through offsets of income tax refunds and other means." 137 Cong. Rec. H1808, H1810 (1991) (statement of Rep. Ford.)

It is suggested that a legislative solution may be appropriate given the arguments raised by the Department of Education. It is clear that Congress has been uniquely concerned with the protection of Social Security benefits for decades and with the amendment to 42 U.S.C. § 407(b) emphasized the broad-ranging limitation placed upon congressional actions, unless those particular actions make "express reference" to the Social Security Act. On the other hand, the Department of Education contends that the collection of student loan debt is also a matter of important congressional concern. If the Department of Education's argument is correct, then the question presented involves a process of attempting to define, from meager legislative history, congressional intent when

these two important legislative prerogatives collide. Given the infancy of the decisions in this case and *Lockhart*, a reasonable alternative is to at least allow Congress an opportunity to address the issues raised by the offset of Social Security benefits for student loans outstanding for more than ten years.

If Congress does not act on this issue, other circuits may have the opportunity to revisit the analysis of these statutory provisions. It is apparent that the courts in this case and *Lockhart* were unaware of the pending actions in the other circuit. Neither of these decisions addressed the analysis contained in the other. Neither decision took a strident position on the issues raised and decided in the other circuit, leaving further synthesis of issues a viable option for future decisions.

2. The Department of Education suggests that this case may have a marginally better record than *Lockhart* and, therefore, present a more suitable vehicle for review of this issue. Pet. 8. Ms. Lee disagrees. Although *Lockhart* presented the legal question in the posture of a dismissal of the complaint, the legal issue is identical in both cases. The individuals in this case and *Lockhart* both had student loans outstanding for at least ten years. While the decision in this case was on the merits, the records in both cases appear to be substantially similar. In this case the entire factual record consists of two affidavits, one by Ms. Lee outlining her student loan history (C.A. App. 37) and one from a Department of Education employee outlining the status of Ms. Lee's outstanding student loan obligation. C.A. App. 23.

The Department of Education states that there are no records indicating that Ms. Lee requested an administrative discharge of her student loan obligation because of a total and permanent disability. Pet. 13, footnote 2. In fact, agency records reflect that Ms. Lee did request a discharge of her debt because of disability; however, the agency on April 10, 1992, determined she was ineligible for loan cancellation because her disability existed prior to disbursement of her student loans. In those circumstances an applicant for a disability discharge must show that her condition has substantially deteriorated since she submitted her loan application. 34 C.F.R. § 682.402(c)(1)(iii). Since her only income has been Social Security benefits, Ms. Lee has never had sufficient funds to repay her student loan. C.A. App. 38. Ms. Lee retains the option of requesting a disability discharge of her student loan upon a showing of substantial deterioration in her condition since she received her loans in 1978.

3. The decision of the Eighth Circuit is correct. Since only three reported cases exist on this issue, the chronology of litigation is simple. The first reported case is *Guillermety v. Secretary of Education*, 241 F. Supp.2d 727 (E.D. Mich. 2002). After a comprehensive review of the statutes and legislative history, *Guillermety* found that Social Security benefit offsets were not permissible for student loans outstanding for more than ten years. As in this case, Education argued that express reference to the Social Security anti-alienation provision, 42 U.S.C. § 407, was not necessary, because the 1991 Higher Education Act (HEA) amendment did not limit or modify the anti-alienation provision but instead merely overrode the ten-year limitations period in the Debt Collection Act (DCA), thereby extending the government's authority to offset

Social Security benefits to collect student loans outstanding for more than ten years. *Id.* at 751. The court disagreed for several reasons.

First, the court explained that section 407(b) specifically rejected repeal by implication. "Requiring 'express reference' to section 407 ensured that Social Security benefits could not be unintentionally limited or modified by past or future legislation." *Id.* at 752. Because section 1091a did not refer to section 407, the court explained, "[t]he Government's interpretation" is precisely "the type of unintentional expansion of an express modification which Congress attempted to eliminate when enacting" section 407(b). *Ibid.*

Second, "when Congress amended section 1091a in 1991, the government was precluded from administratively offsetting Social Security benefits to collect claims of the United States in all circumstances. Clearly then, when Congress eliminated all statutes of limitation with respect to student loan collections in 1991, it could not have contemplated or intended that this sweeping legislation would permit the government to offset Social Security benefits in the future." *Id.* at 753.

Third, when Congress authorized the offset of Social Security benefits, it "expressly retained the ten year statute of limitations" on the government's authority to collect debt by means of offset, 31 U.S.C. § 3716(e), thus "preventing the offset of Social Security and other benefits for claims which had been long outstanding." *Id.* at 757. As the court explained, based on both the legislative history surrounding the DCIA and the fact that the DCIA left the DCA's ten-year limitations period intact, "[t]he unbridled ability to offset social security benefits was not intended

by Congress." *Ibid.* A government appeal to the Sixth Circuit was voluntarily dismissed after the case became moot. See *Guillermety v. Secretary of Education*, 03-1604 (6th Cir. Sept. 24, 2004) (unpublished order).

In this case the district court, after reviewing Education's arguments, noted that they were "identical to those made" in *Guillermety*, and, after an examination of the statutes, concluded that "Education's argument regarding the applicability of § 1091a to offsets of Social Security benefits cannot be sustained." Pet. App. 10a. The court found *Guillermety* persuasive, and the court adopted the reasoning of the *Guillermety* decision. The district court took issue with Education's argument based upon the "chronology of the enactment of the statutes involved." *Id.* at 11a. "When Congress removed all statute of limitations obstacles in § 1091a, it could not have contemplated that its actions would have any effect on Social Security payments because such payments were not yet subject to offset." (citing *Guillermety*, 241 F. Supp.2d at 753) *Ibid.*

The district court interpreted the statutes to give effect to the two primary objects of the legislation: "Congress declared in [the HEA] that there would be no limitations on when student loans could be collected. This statute controls the time for collecting past due amounts." *Id.* at 11a-12a. On the other hand, the court observed that the DCIA's statute of limitations "controls the sources of funds to which Education can look to satisfy its claim. Section 3716 does not limit Education's time in which to collect student loans, rather it limits Education's ability to look to Social Security benefits for repayment." *Id.* at 12a.

The Eighth Circuit affirmed on the basis of the district court's "well-reasoned" opinion. Pet. App. 4a. In

reviewing the district court's opinion, the Eighth Circuit emphasized that Congress, when it amended the Higher Education Act in 1991, "could not have contemplated that its actions would have any effect on Social Security payments, because payments were not subject to offset"; and that the "subsequent Congressional approval of offsetting social security benefits did not import § 1091a into the social security context, because Congress expressly left the ten-year disabling provision intact." *Id.* at 3a.

The only case to adopt the Department of Education's position is *Lockhart v. United States*, 376 F.3d 1027 (9th Cir. 2004). The Department of Education raises the same arguments as those made in *Lockhart*. Like the decision in *Lockhart*, those arguments cannot be sustained when viewing the legislative enactments as a whole.

First, *Lockhart* does not mention the points raised in the district court opinions in this case and *Guillermety*, much less respond to their rationale. The Ninth Circuit's statutory analysis is superficial and, in some respects, based upon incorrect assumptions. With respect to the Social Security Act's anti-alienation provision, 42 U.S.C. § 407, the court concluded that since § 407 did not mention offsets by the government, offsets may not be included in the protection provided by § 407. *Lockhart*, 376 F.3d at 1029. The Ninth Circuit apparently believed that the entire anti-alienation provision was an "amendment" enacted in 1983, one year after Congress authorized the use of administrative offset in the Debt Collection Act, 31 U.S.C. § 3716(e). This is incorrect. Although section 407(b), which requires Congress to make "express reference" to section 407 to limit its reach, was enacted in 1983, the language discussed by the Ninth Circuit, which strictly prohibits any attachment of benefits, was part of the

original Social Security Act of 1935. See Social Security Act, ch. 531, Title II, § 208, 49 Stat. 625 (1935). It therefore makes little sense to interpret the meaning of the anti-alienation provision in light of the Debt Collection Act amendment, enacted decades later.

The suggestion that the administrative offset of public assistance benefits is not included in section 407's broad sweep is foreclosed by the Supreme Court's decision in *Philpott v. Essex County Welfare Board*, 409 U.S. 413 (1973), a case *Lockhart* does not cite. As the Supreme Court explained, section 407 imposes a "broad bar against the use of any legal process to reach all social security benefits." *Id.* at 417.

The *Lockhart* decision's cursory analysis entirely overlooks a key question: how the 1991 HEA amendment, which eliminated any period of limitation applicable to student loan collection, and on which the government's position relies, could possibly have eliminated limitations applicable to the offsetting of Social Security benefits, since such offsetting was not permitted at the time.

The *Lockhart* decision lacks any acknowledgment that section 407(b)'s "express reference" requirement might be relevant to the analysis. Given 407(b)'s requirement that any modification be by "express reference" to section 407, and the HEA amendment's lack of any reference to section 407, the HEA amendment cannot properly be interpreted to modify section 407's anti-alienation bar.

Finally, *Lockhart* also appears to rest on an unsupported assumption that the 1991 amendment to the Debt Collection Act, which allowed the offset of Social Security benefits for the first time, "remove[d] any protection under section 407 that Social Security benefits may have had

from offset." 376 F.3d at 1030. As stated above, there is no reason to assume that Congress, by authorizing the offsetting of benefits, intended to eliminate any protection whatsoever afforded by section 407. The legislative history of the amendment, and the text and history of section 407, all suggest the opposite – that Congress, in recognition of the importance of Social Security benefits in providing basic needs for many recipients, intended to allow offset, subject only to any pre-existing legal safeguards. See *Guillermety*, 241 F. Supp.2d at 750-57.

The arguments of the Department of Education are not sustainable for the same reasons that the *Lockhart* decision cannot be supported.

The Department of Education also argues that the decision of the Eighth Circuit below undermines student loan collection activities. This is not correct.

First, the decision carefully limits its parameters to Social Security offsets. The decision concludes: "The Department of Education remains free to pursue payment on the defaulted loans from Ms. Lee; it simply cannot take money from her monthly social security check to reduce the debt." Pet. App. 4a.

Second, the Department of Education's debt collections methods are expansive and varied. In addition to all traditional collection methods, Education may seize federal income tax refunds, garnish the wages of federal employees, and garnish wages of private workers all without judicial involvement and based upon determinations made by the agency alone.

Third, Congress did not intend that Social Security offsets be unlimited. The legislative history makes clear

that the offset of Social Security benefits was to be undertaken in a limited manner in order to avoid possible harm to recipients: "Such safeguards are critical when benefits such as Social Security are the sole or major source of income for the debtor." H.R. Conf. Rep. No. 104-537, 104th Cong., 2d Sess., 142 Cong. Rec. H3842, H4042-43 (Apr. 25, 1996).

The decision of the Eighth Circuit is correct and honors the plain language of the statutory provisions and congressional intent in achieving resolution of the issue.

## CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

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